At the trial Kee Ah Chuan, who was involved in bookmaking activities, gave evidence that he first met the appellant on December 20, 1975 at the front portion of the restaurant at Tampines Market, that the appellant told him that the appellant was a police officer and demanded $20 from him. That day was a race day and several bookmakers were operating inside the market. He collected $15 from some of them and gave it to the appellant who accepted it. Subsequently, on many occasions, which included May 2, May 30 and June 12, 1976, all of which were racing days, he gave the appellant $15 on each occasion "to stop (the appellant) from disturbing the bookmaking activities and arresting the bookmakers and punters at the market". As appears from the transcript of the evidence, he was severely cross-examined, the tenor of the cross-examination being that his allegation that the appellant took money from him was a complete fabrication and that the truth was that on all those occasions the appellant placed bets with him.

The prosecution also proved from the photographs admitted in evidence at the trial that Kee Ah Chuan and the appellant were at the rear of the restaurant at the dates and times specified in the second, third and fourth charges.

The appellant in his defence explained that his presence in the rear of the restaurant on those three occasions was to collect payment from Kee Ah Chuan for money owed to him on a successful bet he had placed with Kee Ah Chuan one day towards the end of April 1976 and that he had prior to that collected $80 from Kee Ah Chuan towards the end of December 1975 in respect of another winning bet.

The trial judge in his Grounds of Decision referred to the appellant as having by his answers during cross-examination revealed "his true untruthful self" and gave his reasons for rejecting the appellant's version of the basis for the payments he had admittedly received from Kee Ah Chuan and for accepting the prosecution evidence that the appellant had received the payments from Kee Ah Chuan as bribes. In my opinion the reasoning of the trial judge appears sound and is justified on the evidence before him.

The crucial question for the trial judge to decide, having regard to the defence, was whether the monies referred to in each of the four charges paid to and received by the appellant from Kee Ah Chuan were bribes or were payments or part payments in respect of bets on horses.

In my judgment, quite apart from the appellant's statement, there was ample evidence before the trial judge to convict the appellant on all the four charges. It is clear from the Grounds of Decision that no reliance was placed by the trial judge on the appellant's statement to an extent which affected his finding on the crucial question he had to decide.

Accordingly, the appeal is dismissed and the sentences affirmed.

Appeal dismissed.

Solicitors: *Peter Yap & Co.*

JEBSEN & JESSEN (SINGAPORE) PTE LTD. v. YEUNG HOI KWANG

[O.C.J. (Kulasekaram J.) April 5, 1978]
[Singapore — Suit No. 1537 of 1974]

Bills of Exchange — Cheque dishonoured — Whether plaintiffs holders in due course — Allegation that there was no consideration for the cheque — Bills of Exchange Act (Cap. 28), s. 30(2).

The plaintiffs were the holders of a cheque issued by the defendant and made payable to cash or bearer. The cheque was dishonoured and the plaintiffs sued the defendants for the full amount of the cheque. The defence was that the cheque was given to one Simon Yoong, the plaintiff's agent for delivery to the plaintiffs and post-dated as payment for white gold. The white gold was not delivered and, as admitted by him in evidence, was misappropriated by Simon Yoong. As the plaintiffs had failed to deliver the goods the defendant alleged that he was discharged from any liability on the said cheque for want of consideration.

Held: (1) at the outset the onus was on the defendant to show that the plaintiffs were not holders in due course;

(2) on the evidence the issue of the cheque was clearly affected with fraud and that being so the onus was on the plaintiffs to prove that value had been given for the cheque. The onus was shifted to the plaintiffs to show that they had delivered the goods to the defendant and on the evidence this onus had not been discharged, and the action must be dismissed.

Pritam Singh Brar for the plaintiffs.

Karuppan Chettiar (*Tan Thian Chua* with him) for the defendant.

Kulasekaram J.: The plaintiffs, Jebsen & Jessen (Singapore) Pte. Ltd., are the holders of a cheque dated February 25, 1974 for the sum of $19,072.58 drawn by the defendant, Yeung Hoi Kwang alias Yoong Oi Kwong, on the Overseas Union Bank Ltd., North Bridge Road Branch, and made payable to cash or bearer. On due presentation at the Bank for payment the cheque was dishonoured. Written notice of such dishonour was given by registered letter dated March 20, 1974 to the defendant. The plaintiffs then in this action sued the defendant for the full amount due on the cheque together with interest at the rate of 8% per annum from the date of dishonour to the date of issue of the writ as the bearer and holder in due course of the cheque.

The defence was that the cheque in question was handed to one Simon Yoong Yoon Yeow, (hereinafter referred to as Simon Yoong), the plaintiffs' agent for delivery to the plaintiffs on January 5, 1974 and post dated February 25, 1974 as payment for and on behalf of the defendant's firm, Marigold Jewellery Enterprises, for 80 tahils 'Degusa P30 White Gold' which the plaintiffs through Simon Yoong had agreed to sell to the said firm and deliver by February 17, 1974. By a letter dated January 5, 1974 written by the defendant to the plaintiffs' agent and acknowledged and confirmed by Simon Yoong it was agreed that should the plaintiffs fail to deliver the said white gold to the said firm by February 17, 1974 then the defendant would countermand payment of the said cheque and treat the same as null and void. As the plaintiffs had failed to deliver the said gold, the defendant is discharged from any liability on the said cheque for want of consideration.

The plaintiffs by their reply denied that the cheque was delivered for the purpose and circum-

stances as mentioned in the defence and said that the plaintiffs had delivered 2 separate lots of white gold to the said firm, one lot on November 29, 1973 for an amount of $10,643.06 and the other lot on December 12, 1973 for an amount of $8,429.52 making a total of $19,072.58. The plaintiffs therefore alleged that the said cheque had been negotiated by Simon Yoong to them to discharge his obligation to them for the two said lots of white gold which they had supplied to him for delivery to the defendant.

At the outset of the trial I directed that having regard to the provisions of section 30(2) of the Bills of Exchange Act that the defendant should begin as the onus was on him to show that the plaintiffs were not holders in due course of this cheque.

The plaintiffs, Jebsen & Jessen Pte. Ltd., in their business activities have a department dealing as wholesalers in white gold. Their chief salesman in this department during the relevant period was Simon Yoong. The defendant was during the relevant period a partner of a firm known as Marigold Jewellery Enterprises hereinafter referred to as the said firm. The said firm carried on business at 515, North Bridge Road, Singapore.

According to the defendant the said firm had bought white gold from the plaintiffs on 3 occasions in 1972 and all the said firm's dealings with the plaintiffs had been entirely through Simon Yoong, the salesman of the plaintiffs. In 1973 his said firm had bought no white gold from the plaintiffs. In particular they had not bought the 2 lots of white gold contained in the plaintiffs' delivery orders AB2 and AB4 dated November 29, 1973 and December 12, 1973 respectively nor had they received delivery of the 2 lots mentioned in these delivery orders. Neither the rubber stamp chop of "Marigold Jewellers" nor the signature under the words "Marigold Jewellers" appearing in each of the delivery orders AB2 and AB4 was that of the said firm. His said firm Marigold Jewellery Enterprises was never known as "Marigold Jewellers" as appearing in AB2 and AB4 and the signature appearing there was not that of any person from the said firm.

Referring to the cheque AB5 the subject matter of this action this is what the defendant had to say. According to him on January 5, 1974 Simon Yoong came to his office. He wanted to sell 80 tahils of white gold of the plaintiffs to the said firm. The price after some discussion was agreed at $19,072.58 for that quantity. Simon Yoong said he would hand this gold on or about February 17, 1974 and he wanted a cheque for the full amount straight away. He did not agree to this and finally after further discussion it was agreed that he would give him a post dated cheque to a date a few days after the proposed delivery date February 17, 1974 for the white gold. He further wanted Simon Yoong to sign an agreement before he gave him the cheque. Later that same day Simon Yoong returned to his office where the so called agreement as in AB8 was signed and he thereafter gave the cheque AB5 post dated to February 25, 1974. AB8 was a letter from the defendant to Simon Yoong where he stated if the white gold in question was not delivered on or before February 17, 1974 he would instruct his Bankers to stop payment on the cheque and to treat the cheque as null and void. At the bottom of that letter Simon Yoong gave his written agreement to this arrangement and signed on it as well.

According to the defendant this was the first time he was booking the gold well ahead of the delivery date. On all his previous dealings with the plaintiffs through Simon Yoong when he booked the gold, delivery was made on the same day or the next day and no written agreement of any kind was entered into. On this occasion on January 5, 1974 as the price of gold was then rising he wanted this written agreement AB8 to fix the price on that day's market price as he was hoping to make a profit by the time the delivery date arrived. He had here given a cash cheque at the request of Simon Yoong on this occasion and not a cheque payable to the plaintiffs which he had done on all his other dealings with the plaintiffs when he bought white gold because he was keen to have this written agreement to bind the plaintiffs and he also trusted Simon Yoong. He was buying this gold from the plaintiffs and expected Simon Yoong to hand them the cheque AB5. In fact he had asked Simon Yoong to do so when he gave him the cheque AB5.

By February 17, 1974 he had not received the white gold contracted for in AB8 through Simon Yoong. Then on February 22, 1974 he received the letter from the plaintiffs AB17 dated February 21, 1974 wherein they mentioned about the 2 invoices AB1 and AB3 of November 29, 1973 and December 12, 1973 respectively totalling a sum of $19,072.58 in return for which they were in receipt of the defendant's post dated cheque for that amount and they would present the said cheque for payment on the due date. On receipt of this letter he tried to contact Simon Yoong but failed. However, later the same day February 22, 1974, Simon Yoong came to his office and he confronted him with this letter AB17. Simon Yoong asked him not to worry about this letter as it was purely a matter between him (Simon Yoong) and the plaintiffs. On this assurance by Simon Yoong he let the matter rest there as far as the plaintiffs were concerned but as he did not feel altogether happy with that situation in spite of what Simon Yoong had told him he immediately wrote to his bank and instructed them to stop payment on the said cheque.

In cross examination the defendant was referred to the delivery order P1 dated October 9, 1973 which represented an earlier transaction to the ones in AB2 or AB4, though similar to them. Here too the defendant said he had not received the goods stated therein and the rubber stamp chop and the signature below it did not belong to his said firm. He also denied having paid for it.

The defendant called Simon Yoong in support of his defence. Simon Yoong amply confirmed all what the defendant had said. He explained that though he had received the white gold mentioned in the delivery orders AB2 and AB4 from the plaintiffs for delivery to the defendant's said firm yet he had not delivered the white gold in question to the said firm but had sold them to others and had misappropriated from the plaintiffs the proceeds of these sales. The rubber stamp chop "Marigold Jewellers" had been made by him, he had chopped the delivery orders AB2

and AB4 with this rubber stamp chop and the signature under the chop in each of these delivery orders had been written by him. He had deliberately made the rubber stamp chop as "Marigold Jewellers" and not "Marigold Jewellery Enterprises" as he did not want to get the said firm involved. When questioned as to what he did to cover his misappropriation from the plaintiffs regarding AB2 and AB4 he replied thus:

"When the plaintiff Co. was hot on my heels I made a calculation and offered to the defendant 80 tahils of white gold for sale. The price of white gold was rising at that time. So I influenced the defendant to book in advance from me so that I can get the goods from the Co. He knew I was offering the plaintiff Co.'s goods. P30 white gold was always from the plaintiff Co. It was the most saleable grade of white gold. It was this that I offered to the defendant. I asked the defendant to make payment to me in advance but he refused. Then I asked him to give me a post dated cheque. He refused that also. We had some further negotiations and we reached an agreement that he should post date cheque to one week after the proposed date of delivery. I went back to him again at about 6 or 7 pm. the same day i.e. January 5, 1974. Then I signed the agreement AB8 and then the defendant handed me the cheque AB5."

He added he had handed this cheque AB5 on the very next day after its receipt, which would be January 6, 1974, to the plaintiffs, of course, as payment for AB2 and AB4.

By October 1973 the plaintiffs had according to their accountant, Eric Wee Kim San, as a matter of improved procedure seen to it that at least two members of the staff accompanied the goods whenever any delivery of goods were made to customers. According to this witness it was not till early February 1974 that the plaintiffs began to suspect the misdeeds of Simon Yoong. According to Simon Yoong however a Mr. Seet or someone else from the plaintiffs accompanied him during the latter part of 1973 when making deliveries as the plaintiffs were having their suspicions on him.

Regarding the deliveries of the goods contained in AB2 and AB4 and even of the earlier delivery contained in P1 this is what he said:

"I had the rubber stamp in my office. I chopped it and signed it in my office before proceeding with the gold from the plaintiff Co. I went to 'M.J. Enterprise' with Mr. Seet. There I made Mr. Seet to sit at the office of Tai Wah Goldsmith. Both Tai Wah Goldsmith and 'M.J.E.' have their offices on the 1st floor of 515, North Bridge Road. So while Mr. Seet was seated in Tai Wah's office I went only to 'M.J.E.' office and there I had a chat with the defendant and I came back to Tai Wah's office. With Mr. Seet I left Tai Wah's office and on the way out I handed Mr. Seet the delivery note AB2 to Mr. Seet. The gold I did not leave with 'M.J.E.' but I kept it with me in my pocket. I did the same thing in respect of AB4 again accompanied by Mr. Seet.

I see P1.

These goods were not sold to 'M.J.E.' and not received by them. They also did not make payment for the goods in P1."

The cross examination of Simon Yoong revealed in greater detail the circumstances under which he had to get the cheque AB5 from the defendant and hand it to the plaintiffs. Simon Yoong also explained that though in 1972 according to the plaintiffs' records there had been about 8 transactions a good many of them were not genuine transactions but similar forgeries like the ones he had explained.

Simon Yoong had been prosecuted on a number of counts for having committed breach of trust of the plaintiffs' property and one of these charges, Exhibit D3, was in respect of transactions referred to in AB2 and AB4. He had pleaded guilty to all these charges and he has appropriately been dealt with by the court.

The plaintiffs in reply called two witnesses, the accountant, Eric Wee Kim San, and Yan San Wah, another employee of theirs, but they did not carry the case much further.

Eric Wee apart from his evidence concerning the procedure adopted by the plaintiffs when effecting deliveries of their goods to the customers to which I have already referred, also confirmed that on November 29, 1973 and December 12, 1973 he had handed to Simon Yoong the gold mentioned in AB2 and AB4 respectively. Subsequently he had received from Simon Yoong the 2 delivery orders AB2 and AB4 signed and stamped by the customer as having received the goods. On January 7, 1974 he had received the cheque AB5 from Simon Yoong in payment for the goods in AB2 and AB4.

In cross examination he said he had accepted the rubber stamp chop on AB2 and AB4 as that of the said firm as on an earlier transaction the customer had paid for the goods when the rubber stamp chop on the delivery order was similar to these. P1 represented one such case.

On the evidence before me I did not accept Eric Wee's bare statement that the customer, by which he meant the said firm, had paid for the goods in the delivery order P1 and on an earlier delivery order with a similar questionable rubber stamp chop of "Marigold Jewellers" having regard to the evidence of the defendant and Simon Yoong to the contrary. The defendant had said in his previous purchases of white gold from the plaintiffs he had paid them by cheque made payable to them and denied any payment on delivery orders with this disputed rubber stamp chop. Simon Yoong said that payment on these disputed transactions had been made by him to the plaintiffs but such payments were never from the defendants. If the plaintiffs had successfully established this payment by the said firm in respect of the delivery order P1, then the whole of the defendant's evidence would have been rendered highly suspect and unworthy of credit. The plaintiffs have failed to do this.

I find on the defendant's evidence that the issue of the cheque AB5 to Simon Yoong on January 5, 1974 was clearly affected with fraud and that being so having regard to section 30(2) of the Bills of Exchange Act the onus is on the plaintiffs to prove that value had been given for the cheque.

The onus was shifted to the plaintiffs to prove that they had delivered the goods comprised in the delivery orders AB2 and AB4 to the said firm. This onus on all the evidence before me I found they had not discharged.

Hence plaintiffs' claim was dismissed with costs.

Claim dismissed.

Solicitors: *Sidhu & Sidhu; Tan Thian Chua & Co.*